

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

WESTERN PUBLISHING COMPANY, INC.,  
I.S.A. IN NEW JERSEY, INC.,  
F.I.C.A. a/k/a/ DUTCHESS SANITATION  
SERVICES, INC.,  
JOSEPH FIORILLO, SR., and  
HUDSON VALLEY ENVIRONMENTAL  
SERVICES, INC.,

Defendants.

CIVIL ACTION NO.

94-CV-1247 (LEK/DNH)

F.I.C.A. a/k/a/ DUTCHESS SANITATION  
SERVICES, INC. and JOSEPH FIORILLO,  
SR.,

Third-Party Plaintiffs,

v.

FORD MOTOR COMPANY,

Third-Party Defendant.

FORD MOTOR COMPANY,

Fourth-Party Plaintiff,

v.

ALFA LAVAL, INC. a/k/a DELAVAL  
SEPARATOR, INC., ET AL.,

Fourth-Party Defendants.

STATE OF NEW YORK,

Plaintiff,

v.

F.I.C.A. a/k/a/ DUTCHESS SANITATION  
SERVICES, INC.,  
JOSEPH FIORILLO, SR., and  
HUDSON VALLEY ENVIRONMENTAL  
SERVICES, INC.,

Defendants.

CIVIL ACTION NO.

86-CV-1136

PARTIAL CONSENT DECREE

240950



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## PARTIAL CONSENT DECREE

### I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter on September 26, 1994, against Western Publishing Company, Inc. (now currently known and referred to herein as Golden Books Publishing Co., Inc. ("Golden Books")), Joseph Fiorillo, Sr. (a partner in the Fiorillo, Ianiello, and Cohen Associates partnership ("FICA") and a shareholder and officer of Dutchess Sanitation Services, Inc. ("DSS")), FICA (as successor to DSS), and Hudson Valley Environmental Services, Inc. ("HVES") pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607.

B. The United States in its complaint seeks reimbursement of costs incurred by EPA and the United States Department of Justice for response actions at the Hertel Landfill Superfund Site in Clintondale, New York, together with accrued interest.

C. In accordance with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300, and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New York (the "State") on April 5, 1996 and May 6, 1992 of negotiations

with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. On October 15, 1986, the State filed a complaint against FICA, Joseph Fiorillo, Sr., and HVES in this Court alleging that the defendants were liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and state law for cleanup of the Site, compensation for natural resource damages, abatement of public nuisance, and recovery of response costs incurred at the Site. On May 8, 1991, the parties to the State litigation stipulated to remove the lawsuit from the Court's active docket pending the filing of a lawsuit by EPA to recover its response costs at the Site. The State action has been consolidated for all purposes with the instant action so that the State may participate in this settlement.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of Commerce/National Oceanic and Atmospheric Administration and the U.S. Department of Interior/Fish and Wildlife Service on April 5, 1996 and May 6, 1992 of negotiations with potentially responsible parties regarding the release of hazardous substances that may

have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

F. The defendants that have entered into this Consent Decree ("Settling Defendants") neither admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaint, nor acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 1, 1986.

H. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA commenced in April 1989 a Remedial Investigation and Feasibility Study ("RI/FS") for the Site, pursuant to the NCP.

I. EPA completed a Remedial Investigation and Feasibility Study Report for the Site in July 1991.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed

plan for remedial action on July 26, 1991 in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 27, 1991, on which the State had a reasonable opportunity to review and comment and on which it has given its concurrence. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

L. As discussed in greater detail below, the ROD calls for, among other things, construction of a multi-layer cap over the landfill portion of the Site, mitigation of potential harmful impacts to the wetlands adjacent to the Site, implementation of a comprehensive groundwater monitoring program for the Site, and pumping and treating the groundwater at the Site using membrane

microfiltration to remove metals and ultraviolet light and hydrogen peroxide oxidation to remove organics. After consideration of groundwater data obtained at the Site to date, and pending consideration of additional groundwater data to be obtained at the Site following completion of the cap, EPA has not yet determined whether or to what extent implementation of the groundwater treatment portion of the remedy called for in the ROD will still be necessary.

M. On September 21, 1992, EPA unilaterally issued Administrative Order No. II CERCLA-20217 to Ford Motor Company ("Ford"), Golden Books, Joseph Fiorillo, Sr., FICA, and HVES directing those parties to perform the Remedial Design/Remedial Action ("RD/RA") for the remedy described in the ROD.

N. On January 17, 1994, FICA initiated a third-party action in contribution against Ford pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f). Ford filed a fourth-party complaint against 19 additional entities on March 17, 1995, and against one additional entity thereafter ("Fourth-Party Defendants"), for response costs and contribution under Sections 107 and 113(f) of CERCLA, 42 U.S.C. §§ 9607 and 9613(f), among other statutory and common law causes of action. Ford's complaint also included a counterclaim against FICA and Joseph Fiorillo, Sr. and cross-

claims against Golden Books, ISA, and HVES.

O. On February 11, 1997, EPA issued Administrative Order Index Number II-CERCLA-97-0207 to Fourth-Party Defendants/Settling Defendants Alfa Laval, Inc., f.k.a. Alfa-Laval, Inc., and f.k.a. DeLaval Separator Company; Berncolors-Poughkeepsie, Inc.; City of Poughkeepsie, New York; Frye Tech, Inc., f.k.a. Frye Copysystems, Inc.; International Business Machines Corporation; Kem Plastic Playing Cards, Inc.; Poughkeepsie Newspaper Division of Gannett Satellite Information Network, Inc.; tesa tape inc., f.k.a. tesa tuck inc., and f.k.a. Tuck Industries, Inc., directing these parties to cooperate and participate with Golden Books and Ford in the cleanup of the Hertel Landfill Superfund Site.

P. The Remedial Design for the Landfill Cap at the Site was submitted by Settling Defendant Ford pursuant to the 1992 RD/RA Order and approved by EPA on September 30, 1996. Settling Defendants Ford and Golden Books submitted a Remedial Action Work Plan for the Landfill Cap ("Cap RA Work Plan") to EPA in May 1997. EPA approved the Cap RA Work Plan in June 1997. The Cap RA Work Plan provides for construction and implementation of the Landfill Cap portion of the remedy set forth in the ROD, and achievement of the Performance Standards, in accordance with this



Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Cap Remedial Design Work Plan and approved by EPA. In May 1997, Ford and Golden Books also submitted to EPA and the State a Site Management Plan, including a Health and Safety Plan for field activities required by the Cap RA Work Plan, which was approved by EPA in June 1997. Performance of the landfill cap portion of the remedy set forth in the ROD began in June 1997.

Q. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

R. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by Settling Defendants shall constitute a response action taken or ordered by the President.

S. Settling Defendant Kem Plastic Playing Cards, Inc. has represented to the United States that it desires to settle its potential liability at the Site, but that it is unable to pay its full share of the Site cleanup and response costs. This Settling Defendant (hereinafter sometimes referred to as "Kem" or "Ability To Pay Party") was requested to provide and has so provided

certain financial information to the United States to substantiate its contention that it has a limited ability to pay. The United States considered and analyzed this information and has determined, based on this information, that Kem is unable to pay all costs incurred and to be incurred in the future by the United States, or by others, in responding to the release or threat of release of hazardous substances at the Site and is unable to pay for the remainder of the Site cleanup. The amount required of this Ability To Pay Party pursuant to this Decree represents the United States' assessment of the maximum amount that this Ability To Pay Party should be required to pay to discharge its potential liability at the Site given its limited financial means.

T. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

## II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and the State and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree, signed by the Parties hereto, to each contractor hired to

perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

#### IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the

appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Ability To Pay Party" shall mean Kem Plastic Playing Cards, Inc. herein also referred to as "Kem" or "Ability To Pay Party Kem."

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Response Costs" shall mean all costs, other than

Oversight Costs, including, but not limited to direct and indirect costs, that the United States incurs: (a) in developing plans, reports, and other items pursuant to Paragraphs 37.c. or 40 below; (b) in implementing all or portions of the Work pursuant to Paragraph 86 of this Consent Decree, or any modifications to the Work; (c) in enforcing the terms of this Consent Decree; (d) in connection with Sections IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement land/water use restrictions) and XV (Emergency Response); (e) in connection with Section VII (Remedy Review) except for costs incurred in the review or other oversight of Work performed by Settling Defendants pursuant to Section VII; and (f) arising from, or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree.

"Groundwater Pumping and Treatment System" shall mean those aspects of the Record of Decision and Statement of Work which pertain to pumping and treatment of contaminated groundwater at

the Site, including implementation of a comprehensive groundwater monitoring program for the Site and mitigation of potential harmful impacts to the wetlands adjacent to the Site insofar as such impacts could result from any groundwater remediation performed at the Site.

"Interim Response Costs" shall mean (a) all payroll and indirect costs that the United States paid at or in connection with the Site between March 1, 1997 and the date of lodging of this Consent Decree; (b) all other response costs that the United States paid at or in connection with the Site between April 29, 1997 and the date of lodging of this Consent Decree; and (c) all costs, including direct and indirect costs, incurred by the United States with respect to the Site prior to the date of lodging of this Consent Decree but paid after that date. Provided, however, Interim Response Costs do not include any Oversight Costs (as that term is defined below).

"Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1st of each year, in accordance with 42 U.S.C. § 9607(a).

"Municipal Solid Waste" shall mean all waste materials

generated by households, including single and multi-family residences, and hotels and motels. The term also includes waste materials generated by commercial, institutional, and industrial sources, to the extent such wastes (a) are essentially the same as waste normally generated by households, or (b) are collected and disposed of with other municipal solid waste or sewage sludge as part of normal municipal solid waste collection services and, regardless of when generated, would be considered conditionally exempt small quantity generator waste under regulations issued pursuant to Section 3001(d)(4) of the Solid Waste Disposal Act (42 U.S.C. § 6921(d)(4)). Examples of Municipal Solid Waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan



promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"NYSDEC" shall mean the New York State Department of Environmental Conservation and any successor departments or agencies of the State.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work.

"Oversight Costs" shall mean the costs, including but not limited to direct and indirect costs, that the United States incurs in connection with its review of reports, plans, or other submittals by the Settling Defendants pursuant to this Consent Decree or otherwise in reviewing, inspecting, analyzing, overseeing, and verifying performance of the Work under this Consent Decree, or in conducting community relations activities relating to the Work to be performed hereunder, including, but not limited to, payroll and travel costs, contractor costs, and laboratory costs incurred for these purposes.

"Owner, Operator, or Lessee of Residential Property" shall mean a person who owns, operates, manages, or leases Residential

Property and who uses or allows the use of the Residential Property exclusively for residential purposes.

"Owner Settling Defendant" shall mean Hudson Valley Environmental Services, Inc., also known as "HVES."

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

"Parties" shall mean the United States, the State of New York, and Settling Defendants.

"Past Response Costs" shall mean (a) all payroll and indirect costs that the United States paid at or in connection with the Site through March 1, 1997; (b) all other response costs that the United States paid at or in connection with the Site through April 29, 1997; and (c) the Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through July 1, 1997.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action as set forth in the ROD and the SOW.

"Plaintiffs" shall mean the United States in Civil Action No. 94-CV-1247 and the State of New York in Civil Action No. 86-CV-1136.

"RD/RA Orders" shall collectively mean, unless otherwise

specified herein, the two EPA Administrative Orders for Remedial Design and Remedial Action, Administrative Order Index Number II CERCLA-20217 issued on September 21, 1992, and Administrative Order Index Number II-CERCLA-97-0207 issued on February 10, 1997.

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 27, 1991, by the Regional Administrator, EPA Region II, and all attachments thereto. The ROD is attached hereto as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by Settling Defendants to implement the ROD, in accordance with the SOW, including EPA-approved modifications (SOW and modifications attached hereto as Attachment B), and any final Remedial Design and Remedial Action Work Plans, and other plans approved by EPA.

"Remedial Action Work Plan for the Landfill Cap" shall mean the document referred to in Paragraph 12.a. of this Consent Decree and developed pursuant to the RD/RA Orders and approved by EPA, and any EPA-approved amendments thereto.

"Remedial Action Work Plan for the Groundwater Pumping and Treatment System" shall mean the document developed pursuant to Paragraph 12.b. of this Consent Decree and approved by EPA, and any EPA-approved amendments thereto.

"Remedial Design for the Groundwater Pumping and Treatment System" shall mean those activities to be and which may be undertaken by Settling Defendants to develop the final plans and specifications for the Remedial Action relating to the groundwater portion of the ROD pursuant to the Remedial Design Work Plan for the Groundwater Pumping and Treatment System.

"Remedial Design Work Plan for the Groundwater Pumping and Treatment System" shall mean the document to be developed or which may be developed pursuant to Paragraph 11.b. of this Consent Decree and approved by EPA, and any EPA-approved amendments thereto.

"Residential Property" shall mean single or multi-family residences, including accessory land, buildings, or improvements incidental to such dwellings, which are exclusively for residential use.

"Resource Conservation and Recovery Act" or "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendants" shall mean those parties identified in Appendix D, and shall include Non-Owner Settling Defendants,

Owner Settling Defendant, and unless expressly indicated otherwise in this Consent Decree, Ability To Pay Party Kem.

"Sewage Sludge" means solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste water at or by publicly owned or federally owned treatment works.

"Site" shall mean the Hertel Landfill Superfund Site, which includes an approximately 15.5 acre landfill located on an approximately 76-acre tract in the Hamlet of Clintondale, Town of Plattekill, Ulster County, New York, off U.S. Route 44/NY Route 55 between Bedell Avenue and Tuckers Corner Road, and depicted generally on the map attached as Appendix C. The Site includes the areal extent of the contamination and all other areas related to the contamination necessary for the implementation of the ROD.

"Site Property" shall mean an approximately 76-acre tract in the Hamlet of Clintondale, Town of Plattekill, Ulster County, New York, off U.S. Route 44/NY Route 55 between Bedell Avenue and Tuckers Corner Road, and depicted generally on the map attached as Appendix C, and known on the Ulster County Tax Map as Section 95.3, Block 4, Lot 37, the record owner of which is Owner Settling Defendant Hudson Valley Environmental Services, Inc.

"Small Business" shall mean any business entity that employs

no more than one hundred (100) individuals and is a "small business concern" as defined under the Small Business Act (15 U.S.C. §§ 631, et seq.).

"Small Nonprofit Organization" shall mean any organization that does not distribute any part of its income or profit to its members, directors, or officers, employs no more than one hundred (100) paid individuals at the involved chapter, office, or department, and recognized as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code of 1986.

"State" shall mean the State of New York.

"Statement of Work" or "SOW" shall mean the Statement of Work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree, and any modifications made in accordance with the RD/RA Orders and/or with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42

U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree (including the securing and implementation of Institutional Controls), except those required by Section XXV (Retention of Records).

## V. GENERAL PROVISIONS

### 5. Objectives of the Parties

The objectives of the United States and Settling Defendants in entering into this Consent Decree include the implementation of the Work required under this Consent Decree and the resolution of the claims of the Parties for Past Response Costs, Future Response Costs, Interim Response Costs, and Oversight Costs as provided herein.

### 6. Commitments by Settling Defendants

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all Work Plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved by EPA pursuant to this Consent Decree and the RD/RA Orders. Settling Defendants shall also reimburse

the United States for Past Response Costs, Future Response Costs, Interim Response Costs, and Oversight Costs as provided in this Consent Decree.

b. The obligations of Settling Defendants except for Ability To Pay Party Kem to finance and perform the Work and to pay amounts owed the United States and the State under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants except for Ability To Pay Party Kem shall complete all such requirements. In the event of the insolvency or other failure of Ability to Pay Party Kem to implement its Past Response Costs reimbursement obligations under this Consent Decree, the other Settling Defendants shall not be required to complete Kem's Past Response Costs obligations.

c. Settling Defendants shall comply with the RD/RA Orders and shall perform all Work required under the RD/RA Orders in accordance with the terms of the RD/RA Orders, until such time as the RD/RA Orders are superseded by this Consent Decree pursuant to this Paragraph, as to Settling Defendants. Upon entry by the Court, this Consent Decree shall supersede both RD/RA Orders with respect to all subsequent obligations of



Settling Defendants. If this Consent Decree is not entered by the Court, the RD/RA Orders shall remain in full force and effect. Any documents that are required to be submitted under this Consent Decree that have been submitted by Settling Defendants need not be resubmitted after the date that this Consent Decree supersedes the RD/RA Orders, unless EPA determines that such submittal is inadequate.

d. If this Consent Decree is entered by the Court, EPA will not seek penalties or punitive damages pursuant to Section 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3), from or against Settling Defendants hereto with respect to any violations of, or refusals or failures to comply with the provisions of the RD/RA Orders to the extent that such violations, refusals, or failures to comply occur after the date of the entry of this Consent Decree. Accordingly, nothing in this Consent Decree shall be deemed to bar the United States from enforcing the RD/RA Orders with regard to such violation of, refusal, or failure to comply which occurs prior to the date of entry of this Consent Decree.

e. Notwithstanding the entry of this Consent Decree and the superseding of the requirements of the RD/RA Orders with respect to Settling Defendants, the RD/RA Orders shall

nevertheless remain in full force and effect with respect to the other Respondents to either RD/RA Order who are not Parties to this Consent Decree.

7. Compliance With Applicable Law

All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable Federal and State laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and State environmental laws as set forth in the ROD and the SOW. The activities conducted in compliance with this Consent Decree shall be deemed necessary and consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a Federal or State permit or approval, Settling Defendants shall submit timely and complete applications and take all other

actions necessary to obtain all such permits or approvals.

b. Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any Federal or State statute or regulation.

9. Notice of Obligations to Successors-in-Title

a. With respect to the Site Property, within thirty (30) days after the entry of this Consent Decree, the Owner Settling Defendant with the assistance of the other Settling Defendants shall submit to EPA for review and approval a notice to be filed with the Recorder's Office or Registry of Deeds or other appropriate land records office in Ulster County, New York, which shall provide notice to all successors-in-title that the property may be part of or adjacent to the Site, that EPA selected a remedy for the Site on September 27, 1991, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notice shall identify the United States District Court for the Northern

District of New York in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Owner Settling Defendant with the assistance of the other Settling Defendants shall record the notice within twenty (20) days of EPA's approval of the notice. The Owner Settling Defendant shall provide EPA with a certified copy of the recorded notice within ten (10) days of recording such notice.

b. At least thirty (30) days prior to the conveyance of any interest in the Site Property, including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Owner Settling Defendant conveying the interest shall give the grantee written notice of: i. this Consent Decree; ii. any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX (Access and Institutional Controls); and iii. any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls). At least thirty (30) days prior to such conveyance, the Owner Settling Defendant conveying

the interest shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

c. In the event of any such conveyance, the Owner Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Owner Settling Defendant. In no event shall the conveyance release or otherwise affect the liability of the Owner Settling Defendant to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

## VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

### 10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by

Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling, and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Settling Defendants have retained, and EPA has approved, the firm of Bettigole, Andrews, Clark, and Killam Associates ("Killam Associates") as Supervising Contractor. If at any time after entry of this Consent Decree, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree. Settling Defendants' Supervising Contractor, as well as all other contractors and subcontractors who engage in the "practice of engineering" at the Site on behalf of Settling Defendants, as the "practice of engineering" is defined at Section 7201 of the New York State Education Law, must comply with all applicable New York State legal requirements regarding the practice of professional engineering within the State of New York, including, but not limited to, all applicable requirements of the New York State Education Law and Articles 15 and 15-A of the Business Corporation Law.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA a list of contractors (which does not include the contractor previously disapproved), including the qualifications of each contractor, that would be acceptable to them within thirty (30) days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractors that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within twenty-one (21) days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or its disapproval as provided in Paragraph 10.b. and this failure prevents Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

11. Remedial Design.

a. For the Landfill Cap: Upon entry of this Consent

Decree, the Final Remedial Design for the Landfill Cap and any modifications thereto approved by EPA (referred to above in Paragraph P of Section I (Background)) shall be deemed incorporated into and enforceable under this Consent Decree.

b. For the Groundwater Pumping and Treatment System:

i. (1) Pursuant to the SOW as heretofore modified by EPA, Settling Defendants shall not be required to proceed with performance of the Remedial Design Work Plan for the Groundwater Pumping and Treatment System or the Remedial Design for the Groundwater Pumping and Treatment System specified in the ROD and SOW until further notice by EPA as set forth below. Pursuant to EPA modifications to the SOW, within sixty (60) days EPA's written request, Settling Defendants shall submit to EPA and the State a technical report regarding the groundwater at the Site (hereinafter "Groundwater Technical Report"). The purpose of the Groundwater Technical Report will be to assist EPA in determining whether Settling Defendants are to proceed with performance of the Remedial Design Work Plan or Remedial Design for the Groundwater Pumping and Treatment System. The Groundwater Technical Report shall include, but shall not be limited to, the following components regarding the Site: a summary of prior groundwater modeling, groundwater data obtained



from 1996 through the date of the Groundwater Technical Report, an analysis (including graphical depiction) of the extent of groundwater contamination, and an updated risk assessment for groundwater (focused on the exposure pathways for groundwater) using data obtained from 1996 through the date of the Groundwater Technical Report. EPA will review the Groundwater Technical Report in accordance with Section XI (EPA Approval of Plans and Other Submissions) below. Following such review, EPA may direct Settling Defendants to gather and/or analyze additional information relating to the groundwater as needed, including performing appropriate additional groundwater computer modeling, to assist EPA in determining the current need for the groundwater portion of the selected remedy.

(2) Based on the Groundwater Technical Report (modified as needed in accordance with EPA's comments) and other relevant factors as indicated in the Administrative Record, EPA shall make a determination as to whether or not Settling Defendants are to proceed with the groundwater portion of the remedy set forth in the ROD. If EPA determines that Settling Defendants need not proceed with the groundwater portion of the remedy set forth in the ROD, EPA shall notify Settling Defendants in writing of such a determination. Any determination by EPA not

to proceed with the Groundwater Pumping and Treatment System specified in the ROD, or to proceed with any less extensive variation of the Groundwater Pumping and Treatment System, shall be subject to a possible amendment to the ROD, which in turn would be subject to a public notice and comment period.

(3) If EPA determines that Settling Defendants are to proceed with the Groundwater Pumping and Treatment System specified the ROD, or some less extensive variation of the Groundwater Pumping and Treatment System, based on the Groundwater Technical Report and other relevant factors as indicated in the Administrative Record, EPA shall make a written request to Settling Defendants to proceed with the Remedial Design of the Groundwater Pumping and Treatment System as specified in the ROD or as hereafter modified by EPA, subject to a possible amendment to the ROD, which in turn would be subject to a public notice and comment period. Within sixty (60) days after EPA's written request to Settling Defendants to proceed with the Remedial Design of the Groundwater Pumping and Treatment System, or some less extensive variation of the Groundwater Pumping and Treatment System, Settling Defendants shall submit to EPA and the State a work plan for the design of the groundwater portion of the Remedial Action at the Site ("Groundwater Remedial

Design Work Plan" or "Groundwater RD Work Plan"). The Groundwater Remedial Design Work Plan shall provide for design of the groundwater portion of the remedy set forth in the ROD, in accordance with the SOW, or for the design of some less extensive variation of the Groundwater Pumping and Treatment System in accordance with the ROD and SOW as hereafter may be modified by EPA, and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree, and/or the SOW. Upon its approval by EPA, the Groundwater Remedial Design Work Plan shall be deemed incorporated into and become enforceable under this Consent Decree.

ii. The Groundwater Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW that relate to the Groundwater Pumping and Treatment System specified in the ROD, or to some less extensive variation of the Groundwater Pumping and Treatment System in accordance with the ROD and SOW as hereafter may be modified by EPA, including, but not limited to: (1) a Sampling, Analysis, and Monitoring Plan; (2) a Quality Assurance/Quality Control ("QA/QC") Plan; (3) a Health and Safety Plan; (4) a Site Management Plan; (5) a Contingency Plan; (6) an Access Agreements and Administrative

Permitting Requirements Plan; (7) a Description of Additional Remedial Design Tasks; (8) a Remedial Design Schedule; and (9) a Groundwater Treatability Study. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Groundwater Remedial Action Work Plan. The Health and Safety Plan for groundwater field design activities shall conform to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120, and shall be based on the existing Health and Safety Plan for the Landfill Cap Remedial Design and Remedial Action activities, with appropriate modifications.

iii. Upon approval of the Groundwater Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities relating to the Remedial Design for the Groundwater Pumping and Treatment System to EPA and the State, Respondents shall implement the Groundwater RD Work Plan. Settling Defendants shall submit to EPA and the State all plans, submittals, and other deliverables required under the approved Groundwater Remedial Design Work Plan in accordance with the SOW and the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other

Submissions). Settling Defendants shall complete and submit to EPA and the State the Final Design Report for the Groundwater Pumping and Treatment System within four hundred (400) days of EPA's written notification of its approval of the Groundwater Remedial Design Work Plan. Unless otherwise directed by EPA, Respondents shall not commence further Remedial Design activities at the Site relating to the Groundwater Pumping and Treatment System prior to approval of the Groundwater RD Work Plan.

iv. Implementation of the Groundwater Remedial Design shall include the preparation of the following Groundwater Remedial Design Reports in accordance with the specifications set forth in the SOW at Section C.4.: (1) a design criteria report; (2) a preliminary design submittal; (3) an intermediate design submittal; and (4) a final design submittal.

(1) The design criteria report shall include, at a minimum, the following: (a) data, analysis, and other relevant material relating to the groundwater at the Site set forth in the initial Design Criteria Report for the Site and in the Groundwater Technical Report referred to above, including results of all sampling and testing performed pursuant to the specifications set forth in the SOW at Section A.1.a.; (b) a Treatability Study Evaluation Report; (c) descriptions and

detailed design criteria for all components of the remedial and general Site facilities; and (d) location and identification of any previously undisturbed portion of the project area that will be affected by the Remedial Action.

(2) The preliminary design report shall include, at a minimum, the following: (a) results of all sampling and testing performed as part of the Sampling, Analysis and Monitoring Plan set forth in the SOW at Section C.1.a.; (b) process flow diagrams, and preliminary drawings showing general arrangement of all work proposed; (c) draft diagrams showing all equipment and control systems; (d) table of contents for the construction specifications; and (e) engineering plans representing an accurate identification of existing Site conditions, and an illustration of the work proposed.

(3) The intermediate design report shall include, at a minimum, those items set forth in the SOW at Section C.7., including survey work, construction drawings of all proposed facilities and equipment, and engineering plans for security measures and roadways.

(4) The pre-final/final design report shall include, at a minimum, the following: (a) final plans and specifications; (b) an Operation and Maintenance Plan; (c) a

Construction Quality Assurance Project Plan ("CQAPP"); (d) a Field Monitoring Plan; and (e) other items set forth in the SOW at Section C.8.

The CQAPP, which shall detail the approach to quality assurance during construction activities at the site, shall specify a quality assurance official, independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

12. Remedial Action.

a. For the Landfill Cap:

Upon entry of this Consent Decree, the Remedial Action Work Plan for the Landfill Cap and associated Site Management Plan (referred to above in Paragraph P of Section I (Background)) shall be deemed incorporated into and become enforceable under this Consent Decree.

b. For the Groundwater Pumping and Treatment System:

Pursuant to the SOW as heretofore modified by EPA, within thirty (30) days after the approval of the Final Design Report for the Groundwater Pumping and Treatment System, Settling Defendants shall submit to EPA and the State those reports, plans, or other material specified in the SOW at Section D.1., including a Remedial Action Work Plan for the Groundwater Pumping

and Treatment System and Site Management Plan for remedial action activities relating to the Groundwater Pumping and Treatment System (collectively referred to in this Paragraph and Paragraph 12.c., below, as "Groundwater RA Plan Deliverables"). The Groundwater RA Plan Deliverables shall together provide for construction and implementation of the groundwater portion of the remedy set forth in the ROD or of some less extensive variation of the Groundwater Pumping and Treatment System in accordance with the ROD and SOW as hereafter may be modified by EPA, and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Groundwater Remedial Design Work Plan and approved by EPA. Upon their approval by EPA, the Groundwater RA Plan Deliverables shall be deemed incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field activities required by the Groundwater RA Plan Deliverables which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

c. Within sixty (60) days of EPA's written approval of



the Final Design Report for the Groundwater Pumping and Treatment System, or upon approval of the Groundwater Remedial Action Plan deliverables, whichever occurs later, Settling Defendants shall implement the activities required under the Groundwater RA Plan Deliverables. The Settling Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Groundwater RA Plan Deliverables in accordance with the schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Groundwater RA Plan Deliverables.

13. Settling Defendants shall continue to implement the Remedial Action and O & M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree; provided that EPA may determine, within its sole discretion, based on a request submitted by Settling Defendants, that achieving the Performance Standards that pertain directly to the Groundwater Pumping and Treatment System is technically impracticable. In such case, EPA shall issue new Performance Standards which shall be incorporated into this Consent Decree.

14. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the Work specified in the SOW and/or in Work Plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such Work Plans. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph, Paragraph 50, and Paragraph 51 only, the "scope of the remedy selected in the ROD," subject to any modifications that have been or may be made by EPA to the ROD and/or SOW or Work Plans, includes at a minimum: i. design, construction, and Operation and Maintenance of a multi-layer cap consistent with New York State closure requirements (6 NYCRR Part 360) including any necessary design and field studies; ii. installation of gas vents in the landfill; iii. conducting a comprehensive groundwater monitoring program using existing monitoring wells and a minimum of six additional monitoring wells; iv. construction of a fence surrounding the perimeter of the 13-acre landfill; v. groundwater extraction and

treatment consisting of membrane microfiltration and ultraviolet/hydrogen peroxide oxidation of organics; vi. measures to mitigate potential impacts to adjacent wetlands; and vii. deed restrictions on or local ordinances restricting the use of the parcels of real property within the Site.

c. If Settling Defendants object to any modification to the SOW or Work Plans determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 68 (Record Review). The SOW and/or related Work Plans shall be modified in accordance with final resolution of the dispute.

d. Settling Defendants shall implement any work required by any modifications incorporated in the SOW and/or in Work Plans developed pursuant to the SOW in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

15. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, the Remedial Design Plans, or Remedial Action Work Plans constitutes a warranty or representation of any kind by the United States that compliance

with the Work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

16. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-State waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards.

a. Settling Defendants shall include in the written notification the following information, where available: i. the name and location of the facility to which the Waste Material is to be shipped; ii. the type and quantity of the Waste Material to be shipped; iii. the expected schedule for the shipment of the Waste Material; and iv. the method of transportation. Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state

will be determined by Settling Defendants. Settling Defendants shall provide the information required by Paragraph 16.a. as soon as practicable after the award of the contract and in any case not later than two (2) weeks before the Waste Material is planned to be shipped, unless EPA approves otherwise.

#### VII. REMEDY REVIEW

17. Periodic Review. Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five (5) years as required by Section 121(c) of CERCLA and any applicable regulations.

18. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

19. Opportunity To Comment. Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review

conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 82 or Paragraph 83 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute: i. EPA's determination that the reopener conditions of Paragraph 82 or Paragraph 83 of Section XXI (Covenants Not To Sue by Plaintiffs) are satisfied; ii. EPA's determination that the Remedial Action is not protective of human health and the environment; or iii. EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 68 (Record Review).

21. Submissions of Plans. If Settling Defendants are required to perform the further response actions pursuant to Paragraph 20, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section

VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (EPA QA/R5; "Preparing Perfect Project Plans," (EPA /600/9-88/087), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP, and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence,

without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" (Revision No. 11, 1992) and the "Contract Lab Program Statement of Work for Organic Analysis," (Revision No. 9, 1994), and any amendments made thereto during the course of the implementation of this Decree. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set



forth in the QAPP approved by EPA.

23. Upon request, Settling Defendants shall allow split or duplicate samples to be taken by EPA and State personnel and their authorized representatives. Settling Defendants shall notify EPA not less than fourteen (14) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Settling Defendants to take split or duplicate samples of any samples they take as part of EPA's oversight of Settling Defendants' implementation of the Work.

24. Settling Defendants shall submit to EPA and the State, in the amounts and to the addressees set forth in Section XXVI (Notices and Submissions), copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree within thirty (30) days of the date when those results or data become available to Settling Defendants, unless EPA agrees otherwise.

25. Notwithstanding any provision of this Consent Decree, the United States and the State hereby retain all of their information gathering and inspection authorities and rights,

including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

IX. ACCESS, INSTITUTIONAL CONTROLS, AND SITE PROPERTY DISPOSITION

26. Insofar as the real property within the areal extent of the Site is owned by Owner Settling Defendant, and access thereto and/or land/water use restrictions thereon are needed to implement this Consent Decree, the Owner Settling Defendant shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States, the State, and their representatives, including EPA, NYSDEC, and their contractors, with access at all reasonable times to the Site for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- i. monitoring the Work;
- ii. verifying any data or information submitted to the United States or the State;
- iii. conducting investigations relating to contamination at or near the Site;
- iv. obtaining samples;

v. assessing the need for, planning, or implementing additional response actions at or near the Site;

vi. implementing the Work pursuant to the conditions set forth in Paragraph 86 of this Consent Decree;

vii. inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information);

viii. assessing Settling Defendants' compliance with this Consent Decree; and

ix. determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. Such restrictions include, but are not limited to, refraining from any digging, excavating, constructing, or any other activity that might threaten the integrity of the landfill cap once it is completed, other than is

required for the Remedial Action and/or Operation and Maintenance, or as otherwise approved by EPA or the State; and refraining from the digging of wells or the extraction of groundwater or injection of water, or any other activity that might threaten the integrity of any groundwater pumping and treatment system, other than is required for the Remedial Action and/or Operation and Maintenance, or as otherwise approved by EPA or the State; and

c. with any necessary assistance from the other Settling Defendants, such assistance not to include monetary payments to the Owner Settling Defendant, execute and record in the Recorder's Office or Registry of Deeds or other appropriate land records office of Ulster County, New York, an easement, running with the land, that: i. grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree; and ii. grants the right to enforce the land/water use restrictions referred to in Paragraph 26(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The

Owner Settling Defendant shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following persons, as determined by EPA: i. the United States, the State, and their representatives, including EPA, NYSDEC, and their contractors; ii. the other Settling Defendants and their representatives; and/or iii. other appropriate grantees. The Owner Settling Defendant, with any necessary assistance from the other Settling Defendants, such assistance not to include monetary payments to Owner Settling Defendant, shall, within forty-five (45) days of the date of EPA's request, submit to EPA for review and approval with respect to such property:

(1) a draft easement that is enforceable under the laws of the State of New York, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

(2) a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "DOJ Standards").

Within fifteen (15) days of EPA's approval of the easement, the Owner Settling Defendant with the assistance of the other Settling Defendants, such assistance not to include monetary payments to Owner Settling Defendant, shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Recorder's Office or Registry of Deeds or other appropriate office of Ulster County, New York. Within thirty (30) days of recording the easement, the Owner Settling Defendant, with the assistance of the other Settling Defendants, shall provide EPA with final title evidence acceptable under the DOJ Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

d. By its entry into this Consent Decree, Owner Settling Defendant expressly consents and agrees to the filing of this Consent Decree in the Recorder's Office or Registry of Deeds or other appropriate land records office of Ulster County, New York as a judgment lien upon the Site Property and rights to such real property to secure the interests of the United States and the Settling Defendants (excluding Owner Settling Defendant and Ability to Pay Party Kem) to receive reimbursement of costs

incurred and to be incurred by the United States and the Settling Defendants (excluding Owner Settling Defendant and Ability to Pay Party Kem) in their response actions at the Site. Furthermore, by its entry into this Consent Decree, Owner Settling Defendant hereby expressly waives any claim it might have, in whole or in part, to any proceeds from any future sale of the Site Property.

27. If the Site or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree is owned or controlled by persons other than any of the Settling Defendants, Settling Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Defendants, as well as for the United States, the State, and their representatives, including EPA, NYSDEC, and their contractors, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree;

b. an agreement, enforceable by Settling Defendants, the United States, and the State, as determined by EPA, to abide by the obligations and restrictions referred to in and established by Paragraph 26(b) of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference

with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

c. if EPA so requests, the execution and recordation in the Recorder's Office or Registry of Deeds or other appropriate land records office of Ulster County, New York, of an easement, running with the land, that i. grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree, and ii. grants the right to enforce the land/water use restrictions referred to in Paragraph 26(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to one or more of the following persons, as determined by EPA: i. the United States, the State, and their representatives, including EPA, NYSDEC, and their contractors; ii. the other Settling Defendants and their representatives; and/or iii. other appropriate grantees. Within forty-five (45) days of the date of EPA's request, Settling Defendants shall submit to EPA for review and approval with



respect to such property:

(1) a draft easement that is enforceable under the laws of the State of New York, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

(2) a current title commitment or report prepared in accordance with the DOJ Standards referred to above. Within fifteen (15) days of EPA's approval of the easement, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, the easement shall be recorded with the Recorder's Office or Registry of Deeds or other appropriate office of Ulster County, New York. Within thirty (30) days of the recording of the easement, Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

28. For purposes of Paragraph 27 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or restrictive easements. If any access or

land/water use restriction agreements required by Paragraphs 27(a) or 27(b) of this Consent Decree are not obtained within sixty (60) days of the date of lodging of this Consent Decree, or any access easements or restrictive easements required by Paragraph 27(c) of this Consent Decree are not submitted to EPA in draft form within sixty (60) days of the date of EPA's request for such easements, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 27 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid.

29. If EPA determines that land/water use restrictions in the form of State or local laws, regulations, ordinances, or

other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's and/or the State's efforts to secure such governmental controls.

30. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

#### X. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the State to the individuals and in the quantities set forth in Section XXVI (Notices and Submissions) written monthly progress reports that:

- a. briefly describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month;
- b. include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month;
- c. identify

all Work Plans, plans, and other deliverables required by this Consent Decree completed and submitted during the previous month;

d. describe all actions, including, but not limited to, data collection and implementation of Work Plans, which are scheduled for the next six (6) weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts, and Pert charts; e. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; f. include any modifications to the Work Plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and g. describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six (6) weeks. Settling Defendants shall submit these progress reports to EPA and the State by the tenth (10th) day of every month following the lodging of this Consent Decree until EPA notifies Settling Defendants pursuant to Paragraph 51.b of Section XIV (Certification of Completion). If requested by EPA, Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work.

32. Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of Work Plans, no later than seven (7) days prior to the performance of the activity.

33. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), Settling Defendants shall within twenty-four (24) hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Chief of the New York Remediation Branch of the Emergency Response Division, EPA Region II, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

34. Within twenty (20) days of the onset of an event of the type referred to in the preceding Paragraph, Settling Defendants shall furnish to EPA a written report, signed by Settling

Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

35. Settling Defendants shall submit seven (7) copies of all plans, reports, and data required by Section VI, above, the SOW, the EPA-approved Remedial Design Work Plans, the EPA-approved Remedial Action Work Plans, or any other approved plans to EPA in accordance with the schedules set forth in Section VI, above, the SOW, and such approved plans. Settling Defendants shall simultaneously submit seven (7) copies of all such plans, reports, and data to the State.

36. All reports and other documents submitted by Settling Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of Settling Defendants.

#### XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

37. After review of any plan, report, or other item which is required to be submitted for approval pursuant to this Consent

Decree, EPA, after reasonable opportunity for review and comment by the State, shall:

- a. approve, in whole or in part, the submission;
- b. approve the submission upon specified conditions;
- c. modify the submission to cure the deficiencies;
- d. disapprove, in whole or in part, the submission, directing that Settling Defendants modify the submission; or
- e. any combination of the above.

However, EPA shall not modify a submission without first providing Settling Defendants at least one (1) notice of deficiency and an opportunity to cure within fourteen (14) days, except where to do so would cause serious disruption to the Work or where previous submissions have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

38. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraphs 37.a., 37.b., or 37.c., Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute

Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 37.c. and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

39. a. Upon receipt of a notice of disapproval pursuant to Paragraph 37.d., Settling Defendants shall, within fourteen (14) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the fourteen (14) day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 41.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37.d., Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

40. In the event that a resubmitted plan, report, or other



item, or portion thereof, is disapproved by EPA, EPA may again require Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report, or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

41. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Settling Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, or if Settling Defendants do not challenge EPA's disapproval or modification by invoking the dispute resolution procedures set forth in Section XIX, stipulated penalties shall accrue for such violation, as provided

in Section XX, from the date on which the initial submission was originally required.

42. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

## XII. PROJECT COORDINATORS

43. EPA has designated as its Project Coordinator Sharon Trocher. Settling Defendants have designated as their Project Coordinator David Miller of Ford Motor Company. The addresses and telephone numbers of the respective Project Coordinators are given in Section XXVI (Notices and Submissions). Within twenty (20) days of lodging this Consent Decree, Settling Defendants and EPA will notify each other, in writing, of the name, address, and telephone number of their respective designated Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the EPA at least five (5) working days

before the changes occur, unless impracticable, but in no event later than the actual day the change is made. Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Settling Defendants' Project Coordinator shall not be an attorney for any of Settling Defendants in this matter. She or he may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

44. Plaintiffs may designate other representatives, including, but not limited to, EPA and State employees, and Federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager and an On-Scene Coordinator by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when she or he determines that

conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

45. Settling Defendants' Project Coordinator shall be available to meet with EPA at EPA's request.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

46. Within thirty (30) days of entry of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of \$10,000,000 in one or more of the following forms:

- a. a surety bond guaranteeing performance of the Work;
- b. one or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. a trust fund;
- d. a guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of Settling Defendants; and/or
- e. a demonstration that one or more of Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f).

47. If Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 46.d. of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 46.d. or e., they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendants shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting the requirements of this Section. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

48. If Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 46 above after entry of this Consent

Decree, Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Settling Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

49. Settling Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

#### XIV. CERTIFICATION OF COMPLETION

##### 50. Completion of the Remedial Action

a. Within ninety (90) days after Settling Defendants conclude that the Remedial Action has been fully performed and

the Performance Standards have been attained, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If, after the pre-certification inspection, Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within thirty (30) days of the inspection. In the report, a registered professional engineer and Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or Settling Defendants' Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including

the possibility of fine and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this



Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution). Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

51. Completion of the Work

a. Within ninety (90) days after Settling Defendants conclude that all phases of the Work (including O & M) have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling

Defendants and EPA. If, after the pre-certification inspection, Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or Settling Defendants' Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require Settling Defendants

to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution). Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify Settling Defendants in writing.

## XV. EMERGENCY RESPONSE

52. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 53, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, Settling Defendants shall notify the Response and Prevention Branch of the Emergency and Remedial Response Division, EPA Region II at (973) 321-6656. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA for all costs of the response action not inconsistent with

the NCP pursuant to Section XVI (Reimbursement of Response Costs).

53. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States or the State: a. to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site; or b. to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiffs).

#### XVI. REIMBURSEMENT OF RESPONSE COSTS

54. Settling Defendants shall pay to the EPA Hazardous Substance Superfund \$443,500, plus interest as set forth below, and Ability to Pay Party Kem shall pay to the EPA Hazardous Substance Superfund \$10,000, plus interest as set forth below, in reimbursement of Past Response Costs according to the following payment schedule:

a. Within twenty (20) days of the date of lodging of

this Consent Decree, Settling Defendants and Kem shall deposit \$203,500 and \$10,000, respectively, into an interest-bearing Escrow Account ("Past Costs Escrow Account"). The costs of the escrow and the risk of loss as to any of the principal shall be borne by Settling Defendants. The terms of the escrow agreement shall be subject to prior approval by EPA. Within ten (10) days of receiving notice of the entry of this Consent Decree, Settling Defendants shall withdraw the principal plus all accrued interest from the Past Costs Escrow Account and make payment of that entire amount by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 94V0942, EPA Region II and Site/Spill ID 02H7, and DOJ case number 90-11-2-767A. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of New York following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Settling Defendants and Kem shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and to:

Chief, Financial Management Branch  
U.S. Environmental Protection Agency, Region II  
290 Broadway  
New York, NY 10007-1866

b. Settling Defendants shall pay \$240,000 in two installments of \$120,000 plus accrued Interest (calculated on the outstanding balance through the date of payment), payable on the first and second anniversaries, respectively, of the entry of this Consent Decree. Each of these payments shall be made by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 94V0942, EPA Region II and Site/Spill ID 02H7, and DOJ case number 90-11-2-767A. Each payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of New York following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Settling Defendants shall send notice that each such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and to:

Chief, Financial Management Branch  
U.S. Environmental Protection Agency, Region II

290 Broadway  
New York, NY 10007-1866

c. Within twenty (20) days of the date of lodging of this Consent Decree, Kem shall deposit the sum of \$40,000 in the Willkie Farr & Gallagher/Hertel Steering Committee Escrow Account, which sum shall be applied toward funding the Work at the Site.

d. Within twenty (20) days of the date of entry of this Consent Decree, Settling Defendants shall pay to the State of New York the sum of \$3,814 toward reimbursement of the State's response costs at the Site. Payment shall be made by certified check payable to the "State of New York," and sent to:

David A. Munro  
New York State Department of Law  
Office of the Attorney General  
Environmental Protection Bureau  
The Capitol  
Albany, New York 12224

55. a. Settling Defendants shall reimburse the EPA Hazardous Substance Superfund for all Oversight Costs relating to the construction or O & M of the landfill cap that are not inconsistent with the National Contingency Plan and that have been paid by EPA on or after June 1, 1997, up to a maximum of \$300,000.

b. Settling Defendants shall reimburse the EPA



Hazardous Substance Superfund for all Oversight Costs relating to the design, construction, or O & M of the Groundwater Pumping and Treatment System, as that term is defined above, that are not inconsistent with the National Contingency Plan and that have been paid by EPA on or after June 1, 1997.

c. Settling Defendants shall reimburse the EPA Hazardous Substance Superfund for all Interim Response Costs, as that term is defined above, that are not inconsistent with the National Contingency Plan, up to a maximum of \$125,000.

d. Settling Defendants shall reimburse the EPA Hazardous Substance Superfund for all Future Response Costs, as that term is defined above, that are not inconsistent with the National Contingency Plan.

The United States will periodically send Settling Defendants billings for such costs. Each billing will be accompanied by a printout of cost data in EPA's financial management system that reflects the response costs incurred by EPA that pertain to that billing. Settling Defendants shall make all payments required by this Paragraph within thirty (30) days of the date of receipt of each bill requiring payment, except as otherwise provided in Paragraph 56. The Settling Defendants shall make all payments

via electronic funds transfer ("EFT"). Payment shall be remitted via EFT to Mellon Bank, Pittsburgh, Pennsylvania, as set forth below. To make payment via EFT, Settling Defendants shall provide the following information to their bank or respective banks:

- i. Amount of payment
- ii. Title of Mellon Bank account to receive the payment: EPA
- iii. Account code for Mellon Bank account receiving the payment: 9108544
- iv. Mellon Bank ABA Routing Number: 043000261
- v. Names of Settling Defendants making the payment
- vi. Case number: 90-11-2-767A
- vii. Site/spill identifier: 02H7

Along with this information, Settling Defendants shall instruct their bank to remit payment in the required amount via EFT to EPA's account with Mellon Bank. To ensure that Settling Defendants' payment is properly recorded, Settling Defendants shall send a letter to the United States within one week of the EFT, which references the date of the EFT, the payment amount, the name of the Site, the case number, and each Settling

Defendant's name and address. Such letter shall be sent to the United States as provided in Section XXVI (Notices and Submissions), and to:

Chief, Financial Management Branch  
U.S. Environmental Protection Agency, Region II  
290 Broadway  
New York, NY 10007-1866

56. Settling Defendants may contest payment of any Future Response Costs, Interim Response Costs, or Oversight Costs under Paragraph 55 if they determine that the United States has made a mathematical error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of the date of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs, Interim Response Costs, or Oversight Costs and the basis for objection. In the event of an objection, Settling Defendants shall within the thirty (30) day period pay all uncontested Future Response Costs, Interim Response Costs, or Oversight Costs to the United States in the manner described in Paragraph 55. Simultaneously, Settling Defendants shall establish an interest-bearing escrow account in a Federally-

insured bank duly chartered in the State of New York and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs, Interim Response Costs, or Oversight Costs. Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, Interim Response Costs, or Oversight Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within five (5) days of the resolution of the dispute, Settling Defendants shall pay the sums due, with accrued Interest (as shown by a bank statement, a copy of which shall be submitted with the payment), to the United States in the manner described in Paragraph 55. If Settling Defendants prevail concerning any aspect of the contested costs, Settling Defendants shall pay that portion of the costs for which they did not

prevail, plus associated accrued Interest (as shown by a bank statement, a copy of which shall be submitted with the payment), to the United States in the manner described in Paragraph 55; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendants' obligation to reimburse the United States for its Future Response Costs, Interim Response Costs, or Oversight Costs.

57. In the event that the payments required by Paragraph 54 are not made within thirty (30) days of the effective date of this Consent Decree or the payments required by Paragraph 55 are not made within thirty (30) days of the date of receipt of each bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue thirty (30) days after the effective date of this Consent Decree. The Interest on Future Response Costs, Interim Response Costs, or Oversight Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in

addition to such other remedies or sanctions available to the United States by virtue of Settling Defendants' failure to make timely payments under this Section. Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 55.

#### XVII. INDEMNIFICATION AND INSURANCE

58. a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA, except to the

extent that such act or omission was taken or directed by EPA. Further, Settling Defendants agree to reimburse the United States all for all costs it incurs (including, but not limited to, attorneys fees and other expenses of litigation and settlement) arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither Settling Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 58.a., and shall consult with Settling Defendants prior to settling such claim.

59. Settling Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States arising from or on account of any contract, agreement, or arrangement between any

one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

60. Within five (5) days of lodging of this Consent Decree, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 50.b. of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of \$5,000,000, combined single limit, and automobile liability insurance with limits of \$5,000,000, combined single limit, naming as an additional insured the United States. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation



insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

#### XVIII. FORCE MAJEURE

61. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the

obligation. The requirement that Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event a. as it is occurring and b. following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

62. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Chief of the New York Remediation Branch, Emergency and Remedial Response Division, EPA Region II, within forty-eight (48) hours of when Settling Defendants first knew that the event might cause a delay. Within five (5) days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the

delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

63. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the

time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

64. If Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice under the preceding Paragraph. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 61 and 62, above. If Settling

Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

#### XIX. DISPUTE RESOLUTION

65. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Settling Defendants that have not been disputed in accordance with this Section.

66. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

67. a. In the event that the parties cannot resolve a

dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within fifteen (15) days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, which shall include, but shall not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Settling Defendants. The Statement of Position shall specify Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 68 or Paragraph 69.

b. Within fifteen (15) days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position which addresses the points raised by Settling Defendants and which will include, but will not be limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 68 or 69. Within fifteen (15) days after receipt of EPA's Statement of Position, Settling Defendants may submit a

Reply.

c. If there is disagreement between EPA and Settling Defendants as to whether dispute resolution should proceed under Paragraph 68 or 69, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 68 and 69.

68. Record Review. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow invocation of these dispute resolution procedures by Settling Defendants regarding

the validity of the ROD's provisions or the appropriateness of the remedy selected in the ROD.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Emergency and Remedial Response Division, EPA Region II, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 68.a. This decision shall be binding upon Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs 68.c. and 68.d.

c. Any administrative decision made by EPA pursuant to Paragraph 68.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendants with the Court and served on all Parties within ten (10) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly



implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Emergency and Remedial Response Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 68.a.

69. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph 69.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 67, the Emergency and Remedial Response Division Director, EPA Region II, will issue a final decision resolving the dispute. The Emergency and Remedial Response Division Director's decision shall be binding on Settling Defendants unless, within ten (10) days of receipt of the decision, Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision

setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph R of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

70. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 78. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties); provided, however, that EPA may in its

sole discretion waive such stipulated penalties where Settling Defendants invoke formal dispute resolution procedures in good faith.

#### XX. STIPULATED PENALTIES

71. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraph 72 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Defendants shall include performance and completion of the activities under this Consent Decree or any Work Plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

72. a. The following stipulated penalties shall accrue per violation per day for any noncompliance with the requirements of this Consent Decree, except as set forth in Paragraph 72.c., below:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through the 14th day
\$4,000	15th through the 30th day
\$8,000	31st day and beyond

b. The following stipulated penalties shall accrue per violation per day for any noncompliance with the requirements identified in Paragraph 72.c.:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750	1st through 14th day
\$1,250	15th through 30th day
\$1,850	31st day and beyond

c. Stipulated penalties shall accrue pursuant to Paragraph 72.b. for failure to:

- i. comply with the requirements of Section VIII (Quality Assurance, Sampling, and Data Analysis);
- ii. retain records as required by Paragraph 102;
- iii. submit written notification of any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility pursuant to Paragraph 16;
- iv. comply with the Certification of Completion requirements set forth in Section XIV;
- v. submit written notification regarding delays or anticipated delays, consistent with Paragraph 62;
- vi. submit and, if necessary, revise and resubmit

the Health and Safety Plan for field design activities;

vii. submit and, if necessary, revise and resubmit a Health and Safety Plan for field activities required by the Remedial Action Work Plan;

viii. reimburse response costs pursuant to Section XVI;

ix. comply with the indemnification and insurance requirements set forth in Section XVII;

x. comply with the recording and notice requirements set forth in Paragraph 9;

xi. comply with the reporting requirements set forth in Section X, including the submission of timely or adequate reports pursuant to Paragraph 31; and

xii. submit documents and other information in accordance with Section XXIV.

73. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 86 of Section XXI (Covenants Not to Sue by Plaintiffs), Settling Defendants shall be liable for a stipulated penalty in the amount of \$500,000.

74. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the

correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: i. with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the thirty-first (31st) day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; ii. with respect to a decision by the Emergency and Remedial Response Division Director, EPA Region II, under Paragraph 68.b. or 69.a. of Section XIX (Dispute Resolution), during the period, if any, beginning on the twenty-first (21st) day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or iii. with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the thirty-first (31st) day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

75. Following EPA's determination that Settling Defendants

have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA may send Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Settling Defendants of a violation.

76. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of the date of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). The Settling Defendants shall make all payments via electronic funds transfer ("EFT"). Payment shall be remitted via EFT to Mellon Bank, Pittsburgh, Pennsylvania, as set forth below. To make payment via EFT, Settling Defendants shall provide the following information to their bank or respective banks:

i. Amount of payment

ii. Title of Mellon Bank account to receive the payment: EPA

iii. Account code for Mellon Bank account receiving the payment: 9108544

iv. Mellon Bank ABA Routing Number: 043000261

v. Names of Settling Defendants making the  
payment

vi. Case number: 90-11-2-767A

vii. Site/spill identifier: 02H7

Along with this information, Settling Defendants shall instruct their bank to remit payment in the required amount via EFT to EPA's account with Mellon Bank. To ensure that Settling Defendants' payment is properly recorded, Settling Defendants shall send a letter to the United States within one week of the EFT, which references the date of the EFT, the payment amount, the name of the Site, the case number, and each Settling Defendant's name and address. Such letter shall be sent to the United States as provided in Section XXVI (Notices and Submissions), and to:

Chief, Financial Management Branch  
U.S. Environmental Protection Agency, Region II  
290 Broadway  
New York, NY 10007-1866

77. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

78. Penalties shall continue to accrue as provided in



Paragraph 74 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within fifteen (15) days of the agreement or the date of EPA's decision or order.

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within sixty (60) days of receipt of the Court's decision or order, except as provided in Paragraph 78.c., below.

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

79. a. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as Interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 76.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

80. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS NOT TO SUE BY PLAINTIFFS

81. In consideration of the actions that will be performed and the payments that will be made by Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 82, 83, 85, and 86 of this Section, and Paragraph 104 b. as to Kem, the Plaintiffs covenant not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA and the State of the payments required by Paragraph 54 of Section XVI (Reimbursement of Response Costs). With respect to future liability, as to the Settling Defendants other than Kem these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 50.b. of Section XIV (Certification of Completion), and as to Kem these covenants not to sue shall take effect upon receipt by the Willkie Farr & Gallagher/Hertel Steering Committee Escrow Account of the sum required to be paid pursuant to Paragraph 54.c. These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to

Settling Defendants and do not extend to any other person.

82. United States' Pre-Certification Reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute new proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants to perform further response actions relating to the Site, or to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

a. conditions at the Site, previously unknown to EPA, are discovered, or

b. information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

83. United States' Post-Certification Reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute new proceedings in this action or in a new action, or to issue an administrative order

seeking to compel Settling Defendants to perform further response actions relating to the Site, or to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

a. conditions at the Site, previously unknown to EPA, are discovered, or

b. information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

84. For purposes of Paragraph 82, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 83, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any

information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

85. General Reservations of Rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 81. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

a. claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

c. liability for future disposal of Waste Material at the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA;

d. liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing such injury, destruction, or loss;

e. criminal liability;

f. liability for violations of Federal or State law

which occur during or after implementation of the Remedial Action; and

g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans).

86. Work Takeover. In the event EPA determines that Settling Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 68, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI (Reimbursement of Response Costs).

87. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

## XXII. COVENANTS BY SETTLING DEFENDANTS

88. Covenant Not to Sue. Subject to the reservations in Paragraph 89, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site and Past Response Costs, Oversight Costs, Interim Response Costs, and Future Response Costs as defined herein or this Consent Decree, including, but not limited to:,

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, or any other provision of law;

b. any claims against the United States, including any department, agency, or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site; or

c. any claim arising out of response activities at the Site, including claims based on EPA's selection of response actions, oversight of response activities, or approval of plans



for such activities; arising out of or relating to past or future access to, imposition of covenants, conditions, and restrictions on, or other restrictions on the use or enjoyment of the Site or any property owned or controlled by the Settling Defendants affected by the Institutional Controls and access rights herein; or arising out of the release or threatened release of Waste Material into the environment at the Site.

89. Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a Federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of

Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

90. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. Part 300.700(d).

91. Settling Defendants agree to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against the following persons:

a. any person:

i. whose liability to Settling Defendants with respect to the Site is based solely on CERCLA § 107(a)(3) or (4), and

ii. who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of only Municipal Solid Waste or Sewage Sludge, and

iii. who is a Small Business, a Small Nonprofit Organization, or the Owner, Operator, or Lessee of Residential

Property; and

b. any person:

i. whose liability to Settling Defendants with respect to the Site is based solely on CERCLA § 107(a)(3) or (4), and

ii. who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of fifty-five (55) gallons or less of liquid materials containing hazardous substances, or one-hundred (100) pounds or less of solid materials containing hazardous substances, except where EPA has determined that such material contributed or could contribute significantly to the costs of response at the Site.

92. Settling Defendants agree to withdraw any challenges or comments in opposition to and to not oppose the following settlements currently pending between the United States and other parties in connection with this Site: a settlement between the United States and I.S.A. in New Jersey, Inc. regarding reimbursement of certain costs incurred by the United States in connection with the Site, and a "cash out" settlement between the United States and various parties to this litigation (including but not limited to DuPont Photomasks, Inc. a/k/a DuPont

Semiconductor Products; Schatz Bearing Corporation, f/k/a The Schatz Manufacturing Co., Inc. or The Schatz Manufacturing Co., Inc. division of Kilrol, Inc.; Rao's Suburban Sanitation, Inc.; William Rao f/d/b/a Rao's Suburban Sanitation Royal Carting of Dutchess County, Inc.; Emil Panichi f/d/b/a Royal Carting Service or Royal Carting Service Co.; Panichi Holding Corp. d/b/a Royal Carting Service; M & G Sanitation Corp.; H.O. Penn Machinery Co., Inc.; Pawling Corporation; and Great Eastern Color Lithographic Corp.) in connection with the Site.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

93. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

94. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. The "matters addressed" in this settlement are all response actions taken or to be taken and all Past Response Costs, Interim Response Costs, Oversight Costs, and Future Response Costs incurred or to be incurred by the United States, the State, or any other person with respect to the Site. The "matters addressed" in this settlement do not include those response costs or response actions as to which the United States or the State has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that the United States or the State asserts rights against Settling Defendants coming within the scope of such reservations.

95. Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

96. Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States and the State within ten (10) days of service of the complaint on them. In addition, Settling Defendants shall notify the United States and the State within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial. The notice requirements of this Paragraph shall not apply to litigation in which the United States or the State is the plaintiff.

97. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth

in Section XXI (Covenants Not to Sue by Plaintiffs).

98. Future Cost Recovery

a. The United States and Settling Defendants agree that proceeds of future cost recoveries in this action, whether through settlement or judgment, from any party to this action at the time of lodging of this Consent Decree, but who are not Settling Defendants in this Consent Decree, or from the proceeds of any sale of any portion of the Site Property, shall be divided between the United States and the Settling Defendants according to the following formula:

i. From non-settling defendants Joseph Fiorillo, Sr. and FICA:

(1) Settling Defendants shall receive the full amount of proceeds from the sale of the first sub-divided 27-acre parcel of real property located in the Town of Lloyd formerly owned by FICA, such proceeds currently being held in Keane & Beane Interest Bearing Escrow Account 2616044420-65, plus all accrued interest. These proceeds shall be deposited in the Willkie Farr & Gallagher/Hertel Steering Committee Escrow Account and shall be applied toward funding the Work at the Site;

(2) the United States shall thereafter recover an amount equal to the amount paid to the Settling

Defendants pursuant to subparagraph a.i.(1); and

(3) fifty percent (50%) of the amount remaining from all future cost recoveries from Joseph Fiorillo, Sr. and FICA beyond the initial amounts paid pursuant to subparagraphs (1) and (2) of this Paragraph shall be paid to the United States, and fifty percent (50%) shall be paid to Settling Defendants.

ii. Fifty percent (50%) of the amount remaining from all future cost recoveries from any party to this action at the time of lodging of this Consent Decree, but who are not Settling Defendants in this Consent Decree (other than the parties to the cash out settlement referred to above in Paragraph 92, Joseph Fiorillo, Sr. and FICA), or from any persons formally notified of their potential liability at the Site by EPA as of the time of lodging of this Consent Decree, shall be paid to the United States, and fifty percent (50%) shall be paid to Settling Defendants. Provided, however, that if EPA deems any such named non-settling party to this action (other than Joseph Fiorillo, Sr. and FICA) to be out of compliance with any Administrative Order issued by EPA in connection with the Site, the United States reserves the right to enforce that Order, including seeking civil penalties and/or punitive damages from such party,



and any such recovery by the United States shall be in addition to its share of future cost recoveries, as set forth above.

iii. Forty-seven and one-half percent (47.5%) of the balance of all proceeds from the sale of any portion of the Site Property, after deduction of reasonable expenses necessarily incurred by the Settling Defendants in selling such property and payment of any real estate taxes then owing on such property, and any costs incurred by Settling Defendants, not to exceed \$5,000, in assisting Owner Settling Defendant with its obligations under this Consent Decree, shall be paid to the Settling Defendants (excluding Ability to Pay Party Kem), forty-seven and one-half percent (47.5%) shall be paid to the United States, and five percent (5%) shall be paid to Owner Settling Defendant.

b. The United States and Settling Defendants each will notify the other of any negotiations commenced, and give advance notice of any proposed settlements, with any person with respect to performance of the Work at and/or the recovery of response costs relating to the Site.

c. Nothing in this Paragraph shall be construed as an agreement on the part of the United States to settle with any person or for any particular terms. Nothing in this Paragraph shall be construed to restrict in any way the United States from

settling with any person at any time on any terms the United States deems appropriate. The United States shall retain its unreviewable discretion to accept or reject settlement terms offered by any person at any time.

#### XXIV. ACCESS TO INFORMATION

99. Settling Defendants shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

100. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to the United States under this Consent

Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. Part 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. Settling Defendants may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by Federal law. If Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following:

- i. the title of the document, record, or information;
- ii. the date of the document, record, or information;
- iii. the name and title of the author of the

document, record, or information;

iv. the name and title of each addressee and recipient;

v. a description of the contents of the document, record, or information; and

vi. the privilege asserted by Settling Defendants.

However, no documents, reports, or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

101. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

#### XXV. RETENTION OF RECORDS

102. Until ten (10) years after Settling Defendants' receipt of EPA's notification pursuant to Paragraph 51.b. of Section XIV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its

possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after Settling Defendants' receipt of EPA's notification pursuant to Paragraph 51.b. of Section XIV (Certification of Completion), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature, or description relating to the performance of the Work.

103. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA. Settling Defendants may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by Federal law. If Settling Defendants assert such a privilege, they shall provide EPA with the following:

- a. the title of the document, record, or information;
- b. the date of the document, record, or information;

c. the name and title of the author of the document, record, or information;

d. the name and title of each addressee and recipient;

e. a description of the subject of the document, record, or information; and

f. the privilege asserted by Settling Defendants.

However, no documents, reports, or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

104. a. Certification of Potential Liability Information.

Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

b. Certification of Financial Information. By its signature to this Consent Decree, Ability To Pay Party Kem

Plastic Playing Cards, Inc. certifies to the best of its knowledge and belief that the financial information it has given to the United States is true, correct, and complete. The United States reserves all rights it may have to bring any action against Kem Plastic Playing Cards, Inc. and the covenant not to sue in Section XXI shall not be effective if any information provided by or on behalf of Kem Plastic Playing Cards, Inc. is not true, correct, and complete.

#### XXVI. NOTICES AND SUBMISSIONS

105. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided herein. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the State, and Settling Defendants, respectively.

As to the United States:

Two (2) copies (or seven (7) copies if such communication is a plan or report):

Chief, New York Remediation Branch  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency, Region II  
290 Broadway, 20th Floor  
New York, NY 10007-1866  
Attention: Hertel Landfill Superfund Site Remedial  
Project Manager

One (1) copy of all required written communications other than Work Plans, design documents, and technical reports shall also be sent to each of the following individuals:

Chief, New York/Caribbean Superfund Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region II  
290 Broadway, 17th Floor  
New York, NY 10007-1866  
Attention: Hertel Landfill Superfund Site Attorney

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044  
Re: DOJ # 90-11-3-1144

As to the State:

In addition, when submitting to EPA any written communication required hereunder, Respondents shall simultaneously submit two (2) copies of that communication (unless the given document is a plan or report, in which case seven (7) copies shall be



submitted) to:

Director, Division of Hazardous Waste Remediation  
New York State Department of Environmental  
Conservation  
50 Wolf Road  
Albany, NY 12233-7010  
Attention: Hertel Landfill Site Project Manager

One (1) copy of all required written communications other than  
Work Plans, design documents, and technical reports shall also be  
sent to the following individual:

David A. Munro, Esq.  
New York State Department of Law  
Environmental Protection Bureau  
The Capitol  
Albany, NY 12224

As to Settling Defendants:

David S. Miller  
Settling Defendants' Project Coordinator  
Principal Facility Environmental  
Control Engineer  
Ford Motor Company  
Suite 1400 Parklane Towers East  
One Parklane Boulevard  
Dearborn, MI 48126-2477

Golden Books Publishing Co., Inc.  
c/o Willkie Farr & Gallagher  
Attn: Bonni Fine Kaufman, Esq.  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20036-3384

XXVII. EFFECTIVE DATE

106. The effective date of this Consent Decree shall be the

date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

#### XXVIII. RETENTION OF JURISDICTION

107. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

#### XXIX. APPENDICES

108. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.

"Appendix B" is the SOW and documents relating to EPA's modifications thereto.

"Appendix C" is the description and/or map of the Site.

"Appendix D" is the complete list of Settling Defendants, including Owner Settling Defendant.

XXX. COMMUNITY RELATIONS

109. Settling Defendants shall propose to EPA their participation in the community relations plan which was developed and approved by EPA under the 1992 RD/RA Order and which is incorporated herein. Settling Defendants shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXI. MODIFICATION

110. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and Settling Defendants. All such modifications shall be made in writing.

111. Except as provided in Paragraph 14 ("Modification of the SOW or related Work Plans"), no material modifications

shall be made to the SOW without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and Settling Defendants.

112. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

#### XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

113. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. Part 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants

consent to the entry of this Consent Decree without further notice.

114. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### XXXIII. SIGNATORIES/SERVICE

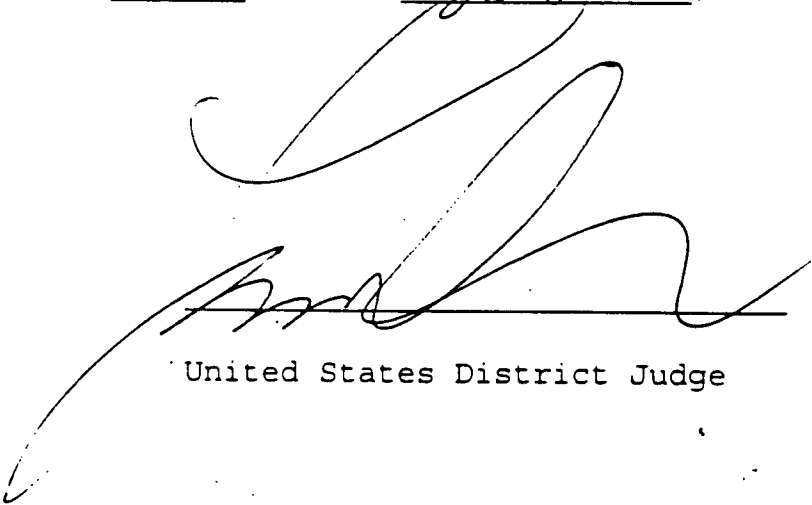
115. Each undersigned representative of a Settling Defendant to this Consent Decree, the State, and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

116. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

117. Each Settling Defendant shall identify, on its

attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS 3<sup>d</sup> DAY OF Feb, 2000, 1998.



United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Western Publishing Company, Inc., et al. (N.D.N.Y.), regarding the Hertel Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA:

Date: \_\_\_\_\_

\_\_\_\_\_  
Lois J. Schiffer  
Assistant Attorney General  
Environment & Natural Resources  
Division  
United States Department of Justice  
Washington, DC 20530

Date: \_\_\_\_\_

\_\_\_\_\_  
Jonathan A. Marks  
Attorney  
Environmental Enforcement Section  
Environment & Natural Resources  
Division  
United States Department of Justice  
P.O. Box 7611  
Washington, DC 20044  
(202) 514-4454  
Bar Roll No.: 104219

Thomas J. Maroney  
United States Attorney for the  
Northern District of New York

Date: \_\_\_\_\_


\_\_\_\_\_  
Thomas Spina, Jr.  
Assistant United States Attorney  
Office of the United States  
Attorney for the Northern District  
of New York

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Western Publishing Company, Inc., et al. (N.D.N.Y.), regarding the Hertel Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA  
(CONTINUED):


Date: \_\_\_\_\_

9/28/98

  
\_\_\_\_\_  
Jeanne M. Fox  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region II  
290 Broadway  
New York, NY 10007-1866

Date: \_\_\_\_\_

8/6/98

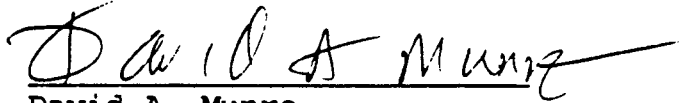
  
\_\_\_\_\_  
Carl P. Garvey  
Assistant Regional Counsel  
Region II  
U.S. Environmental Protection  
Agency  
290 Broadway  
New York, NY 10007-1866



THE UNDERSIGNED PARTY enters into this Consent Decree in the matters of United States v. Western Publishing Company, Inc., et al., 94-CV-1247 and State of New York v. F.I.C.A. et al., 86-CV-1136 (N.D.N.Y.), regarding the Hertel Landfill Superfund Site.

FOR THE STATE OF NEW YORK:

Date: 8/7/98



David A. Munro  
Assistant Attorney General  
New York State Department of Law  
Environmental Protection Bureau  
The Capitol  
Albany, New York 12224  
Bar Roll No. 102968

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Western Publishing Company, Inc., et al. (N.D.N.Y.), regarding the Hertel Landfill Superfund Site.

FOR SETTLING DEFENDANT:

Party: Alfa Laval Inc.

Signature:



Name:

QUINTIN T. JACKSON

Title:

PRESIDENT

Date:

July 6, 1998

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Scott N. Fein. Esq.

Title: Whiteman Osterman & Hanna

Address: One Commerce Plaza

Albany, New York 12260

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Western Publishing Company, Inc., et al., (N.D.N.Y.), regarding the Hertel Landfill Superfund Site.

FOR SETTLING DEFENDANT:

Party: Ford Motor Company

Signature:



Name: Thomas J. Dezure

Title: Assistant Secretary

Date: July 6, 1998

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: John R. Phillips

Title: Assistant General Counsel

Address: 1500 Parklane Towers West

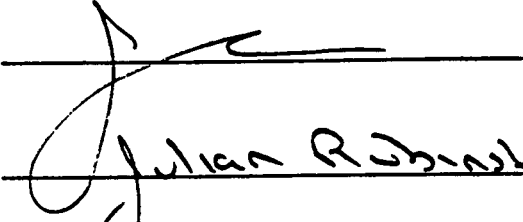
3 Parklane Blvd.

Dearborn, MI 48126-2493

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Western Publishing Company, Inc., et al. (N.D.N.Y.), regarding the Hertel Landfill Superfund Site.

FOR SETTLING DEFENDANT:

Party: FryeTech, Inc.

Signature: 

Name: Julian R. Robinson

Title: President

Date: 6/8/98

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Peter P. Murphy

Title: Associate Gibson, Dunn & Crutcher LLP


Address: 1050 Connecticut Avenue, NW

Washington, DC 20036

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Western Publishing Company, Inc., et al. (N.D.N.Y.), regarding the Hertel Landfill Superfund Site.

FOR SETTLING DEFENDANT:

Party: Golden Books Publishing Co., Inc.

Signature: 

Name: Philip Galanes

Title: Senior Vice President, Legal Affairs

Date: July 6, 1998

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Steven M. Oster/Bonni Fine Kaufman

Title: Counsel

Address: Willkie Farr & Gallagher

1155 21st Street, NW

Suite 600  
Washington, DC 20036

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Western Publishing Company, Inc., et al. (N.D.N.Y.), regarding the Hertel Landfill Superfund Site.

AND TITLE SEARCH EXPENSE NOT TO EXCEED  
\$350.00 DOLLARS

FOR SETTLING DEFENDANT:

Party:

H. V. E. S.

Signature:

Paul V. Winters Jr.

Name:

PAUL V. WINTERS JR.

Title:

PRESIDENT

Date:

8-6-98

Agent Authorized to Accept Service on Behalf of Above-signed Party:

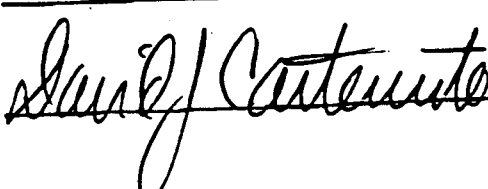
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Western Publishing Company, Inc., et al. (N.D.N.Y.), regarding the Hertel Landfill Superfund Site.

FOR SETTLING DEFENDANT:

Party: IBM Corporation  
Signature:   
Name: David J. Cartenuto  
Title: Associate General Counsel  
Date: July 6, 1998

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Robert S. McEwan, Jr.  
Title: Counsel  
Address: Nixon, Hargrave, Devans & Doyle LLP  
One KeyCorp Plaza, 9th Floor  
Albany, New York 12207

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Western Publishing Company, Inc., et al. (N.D.N.Y.), regarding the Hertel Landfill Superfund Site.

FOR SETTLING DEFENDANT:

Party: KEM PLASTIC PLAYING CARDS INC

Signature: Jeffrey A. Andrews

Name: JEFFREY A. ANDREWS

Title: TREASURER

Date: 7/2/98

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Western Publishing Company, Inc., et al. (N.D.N.Y.), regarding the Hertel Landfill Superfund Site.

FOR SETTLING DEFENDANT:

Party: The Poughkeepsie Journal, a division of Hannett Satellite Information Network, Inc.

Signature: Richard K. Wager

Name: Richard K. Wager

Title: Publisher and President

Date: 7/2/98

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: James T. Johnson, Esq.

Title: Nixon, Hargrave, Devans & Doyle LLP

Address: 1600 Main Place Tower

Buffalo, New York 14202

09/11/98 RE 10:10:11M 1010101417 Doc 003

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Western Publishing Company, Inc., et al. (N.D.N.Y.), regarding the Hertel Landfill Superfund Site.

FOR SETTLING DEFENDANT:

Party: CITY OF POUGHKEEPSIE

Signature: Colette Lafuente

Name: COLETTE LAFUENTE

Title: MAYOR

Date: July 16, 1998

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: STEPHEN J. WING

Title: GELLERT & CUTLER, P.C.

Address: 75 WASHINGTON STREET

POUGHKEEPSIE, NEW YORK 12601

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Western Publishing Company, Inc., et al. (N.D.N.Y.), regarding the Hertel Landfill Superfund Site.

## FOR SETTLING DEFENDANT:

Party:

tesa tape inc.

Signature:



Name:

Charles M. Rigano Jr.

Title:

Deputy Finance Treasurer

Date:

July 8, 1998

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:

Scott N. Fein

Title:

Whiteman Osterman & Hanna

Address:

One Commerce PlazaAlbany, New York 12260